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Chapter 7 Trustee

7 **UNITED STATES BANKRUPTCY COURT**

8 **EASTERN DISTRICT OF CALIFORNIA**

9 **SACRAMENTO DIVISION**

10 In re:

11 **HOME TRADITIONS REAL ESTATE,**

12 **Debtor.**

13 Case No. 07-29027-B-7  
Chapter 7

14 DNL-2

15 Date: April 30, 2013  
Time: 9:32 a.m.  
Place: Dept. B, Courtroom 32  
501 I Street, 6<sup>th</sup> Floor  
Sacramento, California

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17 **MOTION TO APPROVE SALE OF CLAIM**

18 Pursuant to 11 U.S.C. 363(b)(1), SUSAN K. SMITH ("Trustee"), in her capacity as the  
19 trustee for the Chapter 7 bankruptcy estate of HOME TRADITIONS REAL ESTATE ("Home  
20 Traditions"), hereby moves for authority to sell the bankruptcy estate's interest in the claims asserted  
21 in Solano County Superior Court case #FCS038595 ("State Court Case"), to MARK V. BUCEDI  
22 and PATRICIA BUCEDI (collectively referred to as "Bucedis"), for the purchase price of  
23 \$10,000.00 and 33% of the net proceeds of any recovery. The sale is subject to Bankruptcy Court  
24 approval and overbidding at the sale hearing. In support thereof, Trustee respectfully represents the  
25 following:

26 **JURISDICTION AND FACTUAL BACKGROUND**

27 1. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334.

1      Venue is proper in this District pursuant to 28 U.S.C. § 1409. Consideration of this motion is a core  
2 proceeding pursuant to 28 U.S.C. § 157(b)(2)(N).

3      2.      On October 26, 2007, the Bucedis commenced bankruptcy case #07-29026-A-7 by  
4 filing a voluntary Chapter 7 petition. On the same day, Home Traditions, which is a wholly owned  
5 corporation of the Bucedis, commenced the above captioned bankruptcy case by filing a voluntary  
6 Chapter 7 petition. Trustee is the duly appointed trustee of both of the bankruptcy estates.

7      3.      On December 5, 2007, Trustee filed a report of no distribution in each case.

8      4.      The Bucedis' case was closed on February 15, 2008, and on August 1, 2008, the  
9 Home Traditions' case closed.

10     5.      On June 4, 2012, Vincent M. Spohn, on behalf of the Bucedis and Home Traditions,  
11 commenced the State Court Case against Lauralee Ensign, Linda K. Green, 3 Redivas, Inc., a  
12 California Corporation dba Century 21 Distinctive, Reology Corporation, Reology Franchise Group,  
13 and Premier Solano, Inc., dba Century 21 M&M (collectively referred to as "Defendants"). Arising  
14 from alleged verbal promises and a "Memorandum of Intent to Purchase," the State Court Case  
15 alleges causes of actions for breach of fiduciary duty, fraud, negligence, and unjust enrichment. In  
16 response, Defendants have filed multiple demurrers arguing that the claims are legally insufficient  
17 to support proper causes of actions.

18     6.      On July 16, 2012, the Bucedis filed an application to re-open the Home Traditions  
19 bankruptcy case to disclose the State Court Case as an asset. The application did not request the  
20 appointment of a trustee, nor was one appointed. The case was re-opened on July 26, 2012 and re-  
21 closed on August 29, 2012.

22     7.      On October 24, 2012, after the Superior Court issued an order in the State Court Case  
23 requiring the trustee for the bankruptcy estates to be substituted as the real party in interest or face  
24 dismissal, the Bucedis filed an application to re-open both the Home Traditions' bankruptcy case and  
25 their personal bankruptcy case.

26     8.      On October 26, 2012, both cases were reopened and Trustee was re-appointed as  
27 trustee.

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9. A related motion to approve the sale of the Bucedis' bankruptcy estate's interest in the claims will be heard in Department A on April 8, 2013 at 10:00 a.m.

## **TERMS OF SALE AGREEMENT**

4 10. Subject to Bankruptcy Court approval, Trustee has entered into a stipulation to  
5 sell both bankruptcy estates' interest in the State Court Case. Pertinent to this motion, the stipulation  
6 provides that (a) Trustee shall sell and the Bucedis shall purchase the estates' interest in the claims  
7 asserted in the State Court Case; (b) the Bucedis shall pay Trustee \$5,000 within 30 days of the  
8 stipulation; (c) the Bucedis shall pay another \$5,000 within 60 days of the stipulation; and (d) the  
9 Bucedis shall provide the estates with 33% of the net recovery.<sup>1</sup> The Sale Agreement is subject to  
10 Bankruptcy Court approval and overbidding at a duly noticed hearing.

## BASIS FOR RELIEF

12 Pursuant to 11 U.S.C. 363(b)(1), Trustee may sell property of the estate after notice and  
13 hearing. A sale under Section 363(b)(1) must have a valid business justification and be proposed  
14 in good faith. *In re 240 North Brand Partners, Ltd.*, 200 B.R. 653, 659 (9<sup>th</sup> Cir. BAP 1996).  
15 Trustee's proposed sale of the claims asserted in the State Court Case to the Bucedis has a valid  
16 business justification and is in the best interest of the estate. In addition to having to defend against  
17 Defendants' demurrers, Trustee believes that litigating fact intensive claims involving verbal  
18 agreements will be expensive and time consuming for the estate. Trustee's sale will limit the estates'  
19 role in the litigation and minimize costs, while still reserving a one third interest in the recovery.  
20 Moreover, based on the demurrers and Trustee's evaluation, the probability of succeeding on the  
21 merits is unknown and could possibly leave the estates with nothing. As a result, Trustee believes  
22 the sale is in the best interest of the estates because the sale provides the estates with sure funds for  
23 the benefit of the creditors while still providing a one third interest in the net recovery. As such, the  
24 proposed sale should be approved.

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<sup>1</sup> The Bucedis failed to pay the agreed upon amount within the specified time period, but for the benefit of the estates Trustee waived time to allow the Bucedis to comply. The Bucedis have since paid Trustee.

1       **WHEREFORE**, Trustee prays that the motion be granted, and for such other and further  
2 relief as is necessary and proper.

3  
4 Dated: March 15, 2013

DESMOND, NOLAN, LIVAICH & CUNNINGHAM

5  
6 By: 

7       **J. LUKE HENDRIX**  
8       Attorneys for Susan K. Smith  
9       Chapter 7 Trustee

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